



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1868

NOV 14 2000

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Valspar Industries, Inc.
c/o The Valspar Corporation
1101 Third Street South
Minneapolis, MN 55415
Rolf Engh, Esq.
Senior Vice President, General Counsel

Re: Bayonne Barrel & Drum Superfund Site
150-154 Raymond Boulevard, Newark, Essex County, New Jersey

Notice of Potential Liability and Demand for Past Costs
Pursuant to the Comprehensive Environmental Response,
Compensation and Liability Act, 42 U.S.C. §§ 9601-9675

Dear Mr. Engh:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the federal "Superfund" law, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"). EPA has documented the release or threatened release of hazardous substances, pollutants or contaminants into the environment at the Bayonne Barrel & Drum Superfund Site (the "Site"), including, but not limited to, polychlorinated biphenyls, dioxins, and various volatile organic compounds.

Pursuant to our authorities under CERCLA, EPA has been conducting an investigation of, and cleanup activities at, the Site, located in Newark, New Jersey. EPA has spent public funds and intends to

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spend additional public funds on investigative and corrective measures necessary to control such releases or threatened releases.

The purpose of this letter is to inform you that EPA considers Valspar Industries, Inc., f/k/a/ Lilly Industrial Coatings ("Valspar") to be a potentially responsible party ("PRP") under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and to demand that you reimburse EPA's costs of response.

NOTICE OF POTENTIAL LIABILITY

Under CERCLA and other laws, PRPs may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. PRPs may also be subject to orders requiring them to take response actions themselves. Under CERCLA, PRPs include current and past owners or operators of the Site, as well as persons who arranged for the disposal or treatment of hazardous substances at the Site, or the transport of hazardous substances to the Site.

EPA has evaluated information obtained in connection with the Site. Based on this information, EPA believes that Valspar arranged for the disposal or treatment, and/or the transport for disposal or treatment, of hazardous substances possessed by Valspar at the Site. Accordingly, Valspar is a PRP pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). By this letter, EPA hereby notifies you of your potential liability for all costs incurred and to be incurred by the United States with respect to the Site.

Enclosed is a list of names and addresses of PRPs to whom EPA has issued notices of potential liability. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threatened release of hazardous substances at the Site.

SITE ACTIVITIES

Response activities conducted to date at the Site include, but are not limited to: securing the Site by repairing the perimeter fence and installing warning signs; removing approximately 46,000 drums, some containing hazardous substances; testing, segregating and overpacking hazardous substances; removing three ash piles contaminated with dioxin and lead; removing contaminated liquid

and sludge from tanks; sampling Site soils; and installing and sampling groundwater monitoring wells. To undertake these and other response actions, EPA has incurred response costs of approximately \$2,986,500.

PRP ACTIVITIES AND DISCUSSIONS WITH EPA

On September 26, 1996, EPA entered into an Administrative Order on Consent for Removal Action with BASF Corporation, E.I. Dupont de Nemours and Company, General Motors Corporation, PPG Industries, Inc., Solvent Recovery Service of New Jersey, Inc. and Sequa Corporation (Sun Chemical Corporation) to investigate and determine the nature and extent of soil contamination at the Site. Based upon the surface and subsurface sampling results, and EPA's own investigation and sampling results, EPA determined that certain response actions would be necessary at the Site.

On July 6, 2001, EPA sent a letter to the fifteen parties that had, as of that date, received notices of potential liability with respect to the Site, seeking a good faith offer from those parties to reimburse response costs incurred by EPA, and to perform certain response actions.

Thereafter, the recipients of the July 6, 2001 "good faith offer" letter formed the Bayonne Barrel Participating Parties Group (the "Group"). EPA understands that Valspar has joined the Group.

DEMAND FOR REIMBURSEMENT OF PAST COSTS

EPA wishes to determine whether Valspar is prepared to reimburse EPA for the costs it has incurred with respect to the Site. As of January 31, 2003, EPA has incurred approximately \$2,986,500 in response costs in connection with the Site. This statement of expenditures is preliminary, and does not limit EPA from providing a revised figure if additional costs are identified.

In accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, or any other provisions of law. A Reconciled SCORPIOS Report detailing the costs incurred by EPA is enclosed as Attachment A to this letter. All of the costs incurred by EPA with respect to the Site are charged to the Hazardous Substance Superfund, established pursuant to 26 U.S.C. § 9507 and administered by EPA.

Interest on past costs shall accrue from the date of this demand for payment; interest on future costs shall accrue from the date

of expenditure, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest rates are variable. The rate applicable to any unpaid amounts for any fiscal year is the same as the rate that is specified for interest on investments of the Hazardous Substance Superfund, which is determined by the Department of the Treasury.

We request that you advise us of your willingness to reimburse EPA for the costs incurred with respect to the Site. Please reply to this request in writing within 30 calendar days of your receipt of this letter. Your reply should be sent to:

Sarah P. Flanagan
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866

with a copy to:

Joseph Cosentino
On-Scene Coordinator
Emergency and Remedial Response Division
Removal Action Branch
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue
Edison, NJ 08837-3679

If you do not notify EPA within the time specified above that you are prepared to reimburse EPA for its costs, we will conclude that you are unwilling to reimburse the Hazardous Substances Superfund for Site expenditures, and EPA may pursue civil litigation against you.

INFORMATION

An administrative record concerning the Site has been established at EPA's Edison, New Jersey facility. If you wish to review the administrative record please contact Joseph Cosentino, On-Scene Coordinator for the Site, at 732-906-6983.

EPA has also organized, by individual or company name, many thousands of pages of business records retrieved from the Site. Documents pertaining to the recipient of this letter can be viewed at the Edison facility.

If you have any questions regarding this Notice of Potential Liability and Demand for Past Costs, or would like to discuss

this matter with EPA, your attorney may call Sarah Flanagan at (212) 637-3136.

Sincerely yours,



George Pavlou, Director
Emergency and Remedial Response Division

cc: William H. Hyatt, Jr., Esq.
Kirkpatrick & Lockhart LLP
The Legal Center
One Riverfront Plaza Seventh Floor
Newark, New Jersey 07102